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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,072	11/19/2003	Roger Wozniacki	2066/40609	7248
279	7590	01/25/2006		
TREXLER, BUSHNELL, GIANGIORGI, BLACKSTONE & MARR, LTD. 105 WEST ADAMS STREET SUITE 3600 CHICAGO, IL 60603			EXAMINER JOHNSON, JERROLD D	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/717,072

Applicant(s)

WOZNIACKI, ROGER

Examiner

Jerrold Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-13,16-24 and 60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-13,16-24 and 60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

The replacement drawings, Fig. 1A and Fig. 1B, with the "prior art" legend are accepted.

### **37 CFR 1.132 Declaration**

The 37 CFR 1.132 Declaration of Mr. Roger Wozniacki is acknowledged. The Declaration has been given careful consideration.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,4-12 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Menchetti et al. US 5,722,626 in view of Carter US 4,391,202.

Menchetti discloses the claimed spacer including the curved portions and leg portions that are nestable with another spacer. The spacers of Menchetti are for the

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same intended purpose as the present invention, and for that reason it can be said that Menchetti had the same compressive strength requirements as are claimed. The spacer of Menchetti is also of comparable size to the claimed sizes.

Menchetti does not disclose the use of laminated paperboard in his spacer product, but does suggest various materials including wood chips, plastic and gypsum. It is noted that the patent to Menchetti is assigned to National Gypsum Co. and from that it is inferred that gypsum was the material of choice of Menchetti.

Carter discloses the known use of laminated paperboard in the compressive load supporting materials of pallet spacers 16 specifically designed to support heavy loads. It is further submitted that the spacer 16 of Carter has the same function as that of the present invention, which is spacing a large stack of materials from another large stack, thus allowing a forklift to move stacks individually. Carter further provides evidence of that the number of layers (thus determining the thickness of the wave like spacer 16 as well as the weight) and the grain direction are both result effective variables, effecting the compressive strength of the spacers 16.

Accordingly, it would have been obvious to one of ordinary skill in the art to modify the spacer of Menchetti with the teachings of Carter so as to provide a high strength spacer suitable for supporting heavy loads.

With respect to the size and load capacity claims, note that those variables have been set forth in Carter as result effective variables. And, it has been held that it would be obvious to one of ordinary skill in the art to optimize such variables so as to provide necessary properties.

Claims 13 and 16-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Menchetti et al. US 5,722,626 in view of Carter US 4,391,202 and further in view of Briggs et al. US 3,982,057.

As noted in the rejection of claims 1,2,4-12 and 60, Menchetti in view of Carter sets forth the structure of the spacers.

Menchetti in view of Carter does not disclose a second spacer adhered to a first spacer in the claimed configuration.

Briggs discloses adhering adjoining wave shaped paper-based spacers used in high compressive strength applications.

Accordingly, it would have been obvious to one of ordinary skill in the art to modify the spacer of Menchetti in view of Carter with a second spacer adhered to a first spacer so as to increase the compressive strength of the spacers.

Claims 1,2,4-12 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Menchetti et al. US 5,722,626 in view of Carter US 4,391,202, Perry et al. US 2,583,443 and Woods US 5,531,166.

Menchetti discloses the claimed spacer including the curved portions and leg portions that are nestable with another spacer. The spacers of Menchetti are for the same intended purpose as the present invention, and for that reason it can be said that Menchetti had the same compressive strength requirements as are claimed. The spacer of Menchetti is also of comparable size to the claimed sizes.

Menchetti does not disclose the use of laminated paperboard in his spacer product, but does suggest various materials including wood chips, plastic and gypsum. It is noted that the patent to Menchetti is assigned to National Gypsum Co. and from that it is inferred that gypsum was the material of choice of Menchetti.

Perry provides evidence that high compressive strength spacers can be constructed of laminated paper based materials. The spacer is oriented in the same load bearing position as that of the present invention.

Accordingly, one of ordinary skill in the art would recognize the suitability of paper based materials in the construction of the spacer of Menchetti.

Woods evidences in col. 5, lines 1-7, that the particular choice of laminated paper based material used in a spacer (cardboard, paperboard, or fiberboard) depends on the compressive strength requirements of the spacer.

Accordingly, one of ordinary skill in the art would recognize the suitability of other paper base materials, such as paperboard, in the laminated paper based spacer of Menchetti.

Carter discloses the known use of laminated paperboard in the compressive load supporting materials of pallet spacers 16 specifically designed to support heavy loads. It is further submitted that the spacer 16 of Carter has the same function as that of the present invention, which is spacing a large stack of materials from another large stack, thus allowing a forklift to move stacks individually. Carter further provides evidence of that the number of layers (thus determining the thickness of the wave like spacer 16 as

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well as the weight) and the grain direction are both result effective variables, effecting the compressive strength of the spacers 16.

Accordingly, it would have been obvious to one of ordinary skill in the art to modify the spacer of Menchetti with the teachings of Carter so as to provide a high strength spacer suitable for supporting heavy loads.

With respect to the size and load capacity claims, note that those variables have been set forth in Carter as result effective variables. And, it has been held that it would be obvious to one of ordinary skill in the art to optimize such variables so as to provide necessary properties.

Claims 13 and 16-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Menchetti et al. US 5,722,626 in view of Carter US 4,391,202, Perry et al. US 2,583,443 and Woods US 5,531,166 and further in view of Briggs et al. US 3,982,057.

As noted in the rejection of claims 1,2,4-12 and 60, Menchetti in view of Carter sets forth the structure of the spacers. Perry and Woods provide the additional teachings of the benefits of using paper-based materials within the spacer.

Accordingly, one of ordinary skill in the art would recognize the suitability of other paper base materials, such as paperboard, in the laminated paper based spacer of Menchetti.

Menchetti in view of Carter does not disclose a second spacer adhered to a first spacer in the claimed configuration.

Briggs discloses adhering adjoining wave shaped paper-based spacers used in high compressive strength applications.

Accordingly, it would have been obvious to one of ordinary skill in the art to modify the spacer of Menchetti in view of Carter with a second spacer adhered to a first spacer so as to increase the compressive strength of the spacers.

### **Response to Arguments**

Applicant's arguments, including those supported by the aforementioned 1.132 Declaration, have been carefully considered but are deemed moot in view of the new grounds for rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any



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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JDJ



David T. Fidel  
Primary Examiner